Filed 5/20/10 Robertson v. DMV CA1/4
Received for posting 5/24/10

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

WADE ANTHONY ROBERTSON, Plaintiff and Appellant, v. DEPARTMENT OF MOTOR VEHICLES, Defendant and Respondent.	A123892 (San Francisco City & County Super. Ct. No. 507352)

Wade Anthony Robertson appeals from the trial court's denial of his petition for a writ of administrative mandamus challenging the Department of Motor Vehicles's (the Department) suspension of his driver's license for failure to take a chemical test after a lawful arrest for driving under the influence of alcohol. We affirm.

I. BACKGROUND

At approximately 1:00 on the morning of April 28, 2006, Officer Daniel Ryan of the Palo Alto Police Department stopped a truck driven by Robertson. The manager of a local bar had drawn Ryan's attention to Robertson and two other people standing by a pickup truck, and had told Ryan that they had been drinking alcohol, they had refused his offer to call a cab, and he was concerned about their ability to drive. Ryan parked in a place where he could see the truck. He saw the driver's door open and saw someone get into the truck. He made a U-turn and followed the truck.

The truck drove northbound along Ramona Street, and reached the intersection with Lytton Avenue. At that intersection, traffic along Ramona had a flashing red light, and the cross-traffic on Lytton had a flashing yellow light. The truck stopped at the

flashing red light, let one car driving eastbound on Lytton pass, then made a left turn to go westbound on Lytton. In doing so, it went directly in front of a second car that was driving eastbound on Lytton, forcing the car to slow down and almost come to a stop. The car stopped "close to the curb line or the limit line," and the driver avoided a collision with "plenty of clearance." Ryan followed Robertson's truck and stopped it. Robertson was driving, and there were no other passengers in the truck.

Ryan told Robertson the reason for the stop. Robertson argued with him, saying he had not violated anyone's right of way and accusing Ryan of making up the story. Ryan smelled a strong odor of alcohol on Robertson, and asked if he had consumed any alcohol. Robertson told Ryan he was the designated driver and denied having had any alcohol. Ryan checked Robertson's eyes and found nystagmus in both eyes. Ryan then asked him to perform field sobriety tests. He arrested Robertson for driving while intoxicated.

Robertson declined to take a preliminary alcohol screening test at the scene. Ryan took him to the police station and advised him of the "admin per se law," which required him to submit to a chemical test**.** He let Robertson read the text of the law, and read it to Robertson two or three times.[1] Robertson refused to take a chemical sobriety test. When asked if he would take a breath test, he replied, "Absolutely not." When asked if he would take a blood test, he answered, "No, I will not." He was argumentative, and demanded an attorney and a night court judge, and said he wanted to file a petition for writ of habeas corpus that evening. He also threatened to sue Ryan for false arrest.

[1] The text of the admonition stated in part: "1. You are required by state law to submit to a chemical test to determine the alcohol and/or drug content of your blood. [¶] a. Because I believe you are under the influence of alcohol, you have a choice of taking a breath or blood test. . . . [¶] 3. If you refuse to submit to, or fail to complete a test, your driving privilege will be suspended for one year or revoked for two or three years. . . . [¶] 4. Refusal or failure to complete a test may be used against you in court. Refusal or failure to complete a test will also result in a fine and imprisonment if this arrest results in a conviction of driving under the influence. [¶] 5. You do not have the right to talk to an attorney or have an attorney present before stating whether you will submit to a test, before deciding which test to take, or during the test. [¶] 6. If you cannot, or state you cannot, complete the test you choose, you must submit to and complete a remaining test."

During this conversation, Robertson and Ryan talked about paragraph five of the admonition, which stated, "You do not have the right to talk to an attorney or have an attorney present before stating whether you will submit to a test, before deciding which test to take, or during the test." Ryan pointed to that language and said Robertson did not have a right to an attorney, but Robertson insisted that the language meant that he did have such a right.[2] Ryan took this as a sign that Robertson was confused.

Robertson's driving privileges were suspended under Vehicle Code[3] section 13353. This section authorizes a license suspension when a person has refused an officer's request to submit to a chemical test pursuant to section 23612. That section, in turn, provides, in pertinent part, that anyone who drives a motor vehicle is deemed to have consented to a chemical blood or breath test for alcohol if lawfully arrested for certain offenses related to driving under the influence of alcohol. (See §§ 23140, 23152, 23153.) An administrative hearing took place, at which Ryan testified about the events in question. Robertson called as a witness William Krone, a forensic video expert, who testified about a series of photographs taken by three surveillance cameras at a local bank. One camera, with a wide angle lens, was at an automatic teller machine, and looked directly east at Ramona Street. The second camera was mounted higher, and had a view southbound down Ramona. The third camera was in the lobby of the bank, which faced north at Lytton Avenue, and showed a small amount of Lytton. Krone testified that he examined the pictures from the three cameras, including the reflection of head and tail lights along the road, and concluded that the field view and the "cycling times of the cameras" did not support Ryan's version of events. According to Krone, the cameras did not show the vehicles driving along Ramona at the time Ryan testified he was turning and following Robertson's truck, and the gaps in time between the images the camera took were too short for the vehicles to have passed during one of the gaps.

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[2] In filling out the chemical test refusal form, Ryan indicated that Robertson had said in response to the request that he submit to a test, "Absolutely not. I want[] to speak with my attorney, before the test, pursuant to # 5."

[3] All undesignated statutory references are to the Vehicle Code.

After the administrative hearing, the hearing officer upheld the suspension. At Robertson's request, the Department conducted a review, and found that the suspension was proper and required.

Robertson challenged the license suspension through a petition for writ of administrative mandamus. The trial court denied the petition, finding in part that Ryan had a reasonable basis to effect the traffic stop and that there was no basis for Robertson to refuse to take the chemical test.

II. DISCUSSION

A. Adequacy of Administrative Record

Before we address the merits of the decision below, we must consider Robertson's procedural contention that the Department failed to preserve and present to the trial court an adequate administrative record.

1. Background

Robertson filed his petition for writ of mandate on June 20, 2007, and filed a first amended petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5 on July 17, 2007. On June 5, 2008, Robertson filed a motion for peremptory writ of mandate in this action, on the ground that the Department had not produced the complete administrative record and had not cooperated with Robertson to perfect the record. In particular, he contended that the administrative record prepared by the Department did not contain all of the rolls of film containing the surveillance pictures about which Robertson's expert witness, William R. Krone, had testified at the administrative hearing or a map prepared by Krone.

At the administrative hearing, Robertson offered two exhibits. Exhibit A was a map of the area in question, and Exhibit B was a series of pictures taken on the bank's security cameras. It appears that the images in Exhibit B had originally been subpoenaed from Comerica Bank. In a hearing in the administrative action, Robertson's counsel stated that as a result of the subpoena he had obtained seven rolls of stop action film. During the hearing, however, Robertson's counsel asked Ryan if he had reviewed "the roll." He asked to make "the rule [*sic*] an exhibit," and agreed to leave "it" with the

Department. In the ruling in the administrative action, the hearing officer referred to Exhibit B as "[a] roll of pictures from [Comerica Bank's] 3 cameras."

On June 20, 2007, the same date that he filed his petition for writ of mandate, Robertson filed and served a demand that the Department prepare an administrative record and transcript within 30 days. Two months later, the Department certified an administrative record. Exhibits A and B were not included in the certified record. Through his counsel, Ronald Jackson, Robertson contacted the Department, pointing out that the certified administrative record did not contain a reproduction or copy of the video images that were admitted into evidence, stating that the officer was in possession of the only copy of the images, and asking the Department to supply a copy of the video images and make it part of the administrative record. The deputy attorney general assigned to the case, David Carrillo,[4] agreed to open the exhibit, which was sealed, and send it for processing into a usable form. Carrillo sent "a copy of the surveillance video" to Jackson on October 29, 2007, and Jackson responded that the copies were not sufficient to convey the details.

On December 17, 2007, Carrillo informed Jackson, as well as the counsel representing Robertson in separate criminal and civil actions, that in addition to Jackson's request for the roll of images in connection with the petition for writ of mandate, he had also received subpoenas from Robertson's counsel in the other two actions. He proposed to allow the agent for the attorney representing Robertson in the federal civil action to inspect and copy the evidence. Carrillo would then deliver the original roll into the court's custody in the Santa Clara County criminal case against Robertson. According to a declaration Carrillo later filed, counsel agreed to this procedure and Carrillo lodged the roll with the Santa Clara County Superior Court.

On May 1, 2008, Jackson wrote to Carrillo, taking the position that the administrative record was incomplete because (1) it lacked Exhibit A, the map; (2) the copies of the pictures provided by the Attorney General were of poor quality; and (3)

[4] Carrillo is counsel for the Department on appeal.

only one roll of images—rather than the seven Jackson asserted had been admitted into evidence as Exhibit B—had been reproduced.

Robertson filed his motion for peremptory writ of mandate on June 5, 2008, contending the Department had not produced a complete administrative record and had not cooperated with him to perfect the record. He submitted a declaration prepared by Krone stating that he had examined at least four thermal rolls of film. In connection with the Department's opposition, Carrillo submitted a declaration stating, on information and belief, that only one roll of still images was preserved with the administrative record, and that the original roll had since been lodged with the Santa Clara County Superior Court as evidence in the criminal prosecution of Robertson.

The motion was argued on September 10, 2008. At the hearing, counsel for Robertson complained that the Department had provided an inadequate copy of the original pictures and had given away the originals. Carrillo told the court that before the original roll was sent to the Santa Clara court, a digital copy had been made. He offered to deposit the digital copy with the court and amend the record on his own motion. The court agreed the proposal "sound[ed] like a solution," and Robertson's counsel said this was the first he had heard of the digital copy. He also pointed out that the record did not include Exhibit A, the map. He acknowledged, however, that the attorney who had represented Robertson at the administrative hearing had taken a large demonstrative copy of the map with him. The court indicated that the large copy could be brought to the hearing on the petition for writ of mandate. The trial court granted the Department's request to amend the record, characterizing the issue as "much ado about nothing." The Department then supplemented the record with a CD-Rom.

2. Analysis

Where a petitioner seeks judicial review of an agency's ruling after a formal adjudicative proceeding, if the petitioner requests a record of the proceedings, the complete record of the proceedings, or the parts designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency, and delivered to the petitioner within 30 days of the request. (Gov. Code, § 11523; see also

id., § 11501.) The time for preparation and delivery may be extended for good cause shown. The "complete record" includes various items, among them "the exhibits admitted or rejected." (*Id.*, § 11523.)

Robertson points out correctly that the Department did not deliver the record within the 30-day time frame; rather, it originally certified the administrative record two months after the request, and did not augment it with the digital copy of the roll of images until more than a year had passed. Moreover, he contends that the record remained incomplete even after being augmented, as it did not contain the map admitted as Exhibit A and, according to Robertson, lacked some of the rolls of images admitted as Exhibit B.

In the proceedings below, however, Robertson expressly disavowed the argument that the administrative record was inadequate, stating in a brief filed after the Department had augmented the record to include the digital reproduction, "This Petition is not based upon the 'claimed inadequacy of the administrative record,' as Respondent misstates. *Petitioner does not contend that the record is inadequate*, but rather that the record does not support a finding that Ryan made the observations that formed the basis for his detention of Robertson, that the Hearing Officer failed to consider key evidence negating cause to detain, and did an improper expert analysis of the photos without foundation or notice to Petitioner, and that Robertson did not commit a traffic infraction even crediting Ryan's testimony." (Italics added.) This brief was filed two months after the Department augmented the record to include the digital reproduction and after the trial court had indicated that Robertson could use the enlarged version of the map at the hearing on the petition for writ of mandate. At the hearing, Robertson made no attempt to resurrect the argument that the record was incomplete.

We can only conclude that Robertson was satisfied that after the augmentation, the record was complete. Indeed, by his actions, Robertson deprived the trial court of the opportunity to inquire into the factual issue of the adequacy of the record, including the digital augmentation. Having failed to contend below that the record after the augmentation was inadequate—and having disavowed the argument that it was—

Robertson has waived the argument, and we will not consider it on appeal. (See *People v. Jones* (2003) 29 Cal.4th 1229, 1255 [by withdrawing objections to introduction of evidence, defendant waived issue on appeal]; *People v. Robertson* (1989) 48 Cal.3d 18, 44 ["[d]efendant, having withdrawn his objection to the evidence, cannot now complain of its admission"]; *Kenner v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264 [right may be forfeited by failing to make timely assertion below]; *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28-29 [failure to preserve a point below ordinarily constitutes waiver; under principle of " 'theory of the trial,' " party may not change position and adopt different theory on appeal].) The proper time to litigate the completeness of the augmented record for the first time was during the proceedings before the trial court, not on appeal.

We also reject Robertson's argument that the judgment should be reversed because the Department failed to provide the record within 30 days of Robertson's request. Section 11523 does not provide a remedy for an agency's failure to provide a record within that time period, and Robertson cites us to no authority for the proposition that the appropriate remedy is setting aside the action of the agency. (See *Jahangiri v. Medical Bd. of California* (1995) 40 Cal.App.4th 1657, 1664 [Legislature accommodates delay in preparation of administrative record by extending time to file petition where petitioner has timely requested agency to prepare record], citing *Sinetos v. Department of Motor Vehicles* (1984) 160 Cal.App.3d 1172, 1176; accord, *Liberty v. California Coastal Com.* (1980) 113 Cal.App.3d 491, 497.)

Robertson contends he was prejudiced by the delay in delivering and completing the record, pointing out in particular that although the suspension of his driving privilege was stayed during the proceedings below, his driving privileges were limited, and that he was subject to additional expenses as a result of the delays.[5] We reject this contention.

[5] The trial court ordered the Department to stay operation of the ruling suspending Robertson's driving privileges, but restricted his driving to the daytime hours and to employment-related purposes, including driving to and from work. Robertson was

Much of the delay and confusion about the completeness and adequacy of the surveillance pictures appears to have been caused by Robertson's own actions. Robertson himself subpoenaed the pictures from the Department in connection with the criminal case against him and the civil case in which he was involved. Carrillo told Robertson's attorneys in all three cases that he intended to allow counsel in the civil action to inspect and copy the original roll, and afterward Carrillo would send the original roll to the Santa Clara County Superior Court. It appears that Robertson's attorneys all acquiesced in this procedure. Thus, the only roll of images originally in the Department's possession seems passed out of its possession once it was delivered it to the Santa Clara County Superior Court. There is nothing to indicate that the Department created the confusion about the completeness of the record, and we see no basis to conclude that any prejudice Robertson suffered as a result of having to litigate the matter requires reversal of the judgment.[6]

Because Robertson waived the issue of the adequacy of the administrative record, we also reject his contentions that the trial court improperly denied his writ petition without considering the entire administrative record, and that the trial court failed to make findings on the adequacy of the record.

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prohibited from consuming alcoholic beverages. Although the original stay was limited to 90 days, it appears that the stay was lifted only after judgment was entered.

[6] In any case, as the Department notes, it is the *petitioner's* responsibility to produce a sufficient record of the administrative proceedings. (*Elizabeth D. v. Zolin* (1993) 21 Cal.App.4th 347, 354.) In this case, although the Department did not deliver the original record to Robertson within 30 days, the delay was not excessive. As to the exhibits, the trial court could reasonably accept the Department's representation that it had provided everything available to it; indeed, the transcript of the administrative hearing and the findings and decision made after the administrative hearing support an inference that only one roll of pictures was admitted into evidence. Robertson had a copy of the map in question, and the trial court indicated he could use it at the hearing on the petition for writ of mandate. The roll of pictures was out of the Department's possession after Carrillo delivered it to the Santa Clara County Superior Court in response to Robertson's subpoena. Even if Robertson had not expressly abandoned the issue of the completeness of the administrative record, we would conclude that he has not met his burden to show error.

B. Need for Findings

Robertson contends the judgment should be reversed because the trial court failed to make a finding on whether his refusal to take the chemical test was the result of officer-induced confusion about his right to counsel.

1. Background

The hearing officer in the administrative proceedings made no findings on whether Robertson's refusal to submit to a chemical test was due to confusion about his right to counsel. Indeed, Robertson has pointed to nothing in the record to indicate that the issue was raised at all during the administrative proceedings, which focused instead on the validity of Ryan's decision to stop Robertson's vehicle. Nor did the petition, the first amended petition, or the memorandum of points and authorities originally submitted in support of the first amended petition for writ of mandate raise as an issue the reason for Robertson's refusal to take a test. The memorandum argued instead that the initial detention was unlawful, and that "if there is no lawful arrest because there was an unlawful detention, any subsequent refusal to take a chemical test is not relevant." The issue of whether Robertson had refused the test out of confusion about his right to counsel seems to have appeared for the first time in an "Amended Points and Authorities in Support of Petition for Writ of Administrative Mandamus," filed on November 6, 2008, shortly before the hearing on the petition.

At the end of the hearing on the petition,[7] Carrillo told the court he had a proposed order, and Robertson's counsel said, "Can I state that I don't think that the Court's proposed order provides, under *In re Stern* [*sic*], a meaningful enough statement of the reasons to provide further review of the issues involved in this writ."[8] The court

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[7] At the hearing, counsel did not argue the issue of the reason for Robertson's refusal, focusing instead on the propriety of the traffic stop, based on his arguments that Ryan's version of events was inaccurate and that Robertson did not commit a traffic infraction.

[8] Robertson does not tell us what case his counsel meant by the reference to *In re Stern*. The Attorney General suggests Robertson's counsel may have been referring to *In re Sturm* (1974) 11 Cal.3d 258, 260, 270-272, in which our Supreme Court concluded in

responded, "I think it's succinct and to the point as to the basis for my conclusion as to denying the writ."

The order the court signed—which appears to have been the proposed order submitted by Carrillo, and was nearly identical to the language of the court's tentative ruling—read in pertinent part: "After considering the evidence and argument submitted by counsel, and good cause appearing, the Court hereby finds and orders as follows. [¶] The writ petition is denied. Officer Ryan had a reasonable basis to effect the stop. The administrative law judge's analysis is consistent with the evidence and is consistent with the responsibility of the trier of fact to review and weigh the evidence. There was no basis for petitioner to refuse to take a DUI test. A delay associated with the production of the administrative record is no basis for overturning the decision."

2. Analysis

"In ruling on an application for a writ of mandate following an order of suspension or revocation, a trial court is required to determine, based on its independent judgment, ' "whether the weight of the evidence supported the administrative decision." ' [Citations.]" (*Lake v. Reed* (1997) 16 Cal.4th 448, 456-457.)[9] "Under this standard of review, the court must independently weigh the evidence and *may make its own findings*." (*Ocheltree v. Gourley* (2002) 102 Cal.App.4th 1013, 1017 (*Ocheltree*), italics added, citing *Levingston v. Retirement Board* (1995) 38 Cal.App.4th 996, 1000.) Any party to the proceedings may request findings of fact and conclusions of law, pursuant to Code of Civil Procedure section 632.[10] (*Douglas v. Unemployment Ins. Appeals Bd.*

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the context of an application for writ of habeas corpus that the Adult Authority denied an inmate due process of law by refusing to communicate to him in writing its reasons for denying him parole.

[9] On appeal, we " 'review the record to determine whether the trial court's findings are supported by substantial evidence.' [Citation.]" (*Lake v. Reed, supra,* 16 Cal.4th at p. 457.)

[10] Code of Civil Procedure section 632 provides: "In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon

(1976) 63 Cal.App.3d 110, 114 (*Douglas*).) By failing to request a statement of decision pursuant to Code of Civil Procedure section 632, a party waives the right to one, and cannot complain on appeal that the trial court's ruling was not clearer. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1056 (*McCoy*); see also *Prescod v. Unemployment Ins. Appeals Bd.* (1976) 57 Cal.App.3d 29, 32, fn. 2 (*Prescod*); *Hadley v. Superior Court* (1972) 29 Cal.App.3d 389, 394-395.)[11]

Robertson's counsel's statement that he did not think the proposed order provided a "meaningful enough statement of the reasons to provide further review of the issues involved in this writ" did not meet the requirements of Code of Civil Procedure section 632. Under that statute, the request must "specify those controverted issues as to which the party is requesting a statement of decision." (Code Civ. Proc., § 632.) Thus, a broad request that fails to identify specifically which issues the party wants the court to address is inadequate, and faced with such a request, the court need not prepare a statement of decision. (See *Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1394 and fn. 15 [request for statement of decision "upon each of the controverted issues at trial" inadequate]; see also *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1134 (*Arceneaux*) ["a party must request a statement of decision as to specific issues to obtain an explanation of the trial court's tentative decision"]; *In re Marriage of Katz* (1991) 234 Cal.App.3d 1711, 1718 [challenge to sufficiency of statement of decision waived where appellant did not specify in a timely manner the issues as to which she was requesting

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the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. . . . [¶] The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties."

[11] Where a statement of decision is waived, we "assume that the trial court made whatever findings are necessary to sustain the judgment and we indulge all presumptions in favor of the order." (*Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 140.)

statement of decision].) Having failed to specify that he sought a statement of decision on the issue of the reason for his refusal to take a chemical test—or indeed, to have made a clear request for a statement of decision at all—Robertson has waived this challenge to the trial court's findings. (See *Martinez v. County of Tulare* (1987) 190 Cal.App.3d 1430, 1434-1435 [language that did not "specifically ask for a statement of decision" insufficient to trigger requirement that trial court prepare one].)[12]

Despite the authority applying Code of Civil Procedure section 632 to administrative mandamus actions (see, e.g., *McCoy*, *supra*, 183 Cal.App.3d at pp. 1052, 1056; *Douglas*, *supra*, 63 Cal.App.3d at pp. 112, 114; *Prescod*, *supra*, 57 Cal.App.3d at p. 32, fns. 1, 2), Robertson appears to argue that the trial court was required to make findings even in the absence of a request, and that the failure to do so constitutes reversible error. For this proposition, he relies on *Ocheltree*. Both *Ocheltree* and the authority upon which it relies, however, are distinguishable. In *Ocheltree*, the trial court had denied the petition for writ of mandate on the merits before the administrative record had been prepared, and issued a brief order simply stating that it had read and considered the petition, and that the petition was denied. (*Ocheltree, supra*, 102 Cal.App.4th at pp. 1016-1017.) The Court of Appeal found this was error, and ruled that the superior

[12] Similarly, we conclude counsel's statement did not suffice to bring the alleged defects in the proposed order to the attention of the trial court. Code of Civil Procedure section 634, provides: "When a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record shows that the omission or ambiguity was brought to the attention of the trial court either prior to entry of judgment . . . it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue." Even if the proposed judgment constituted a statement of decision, "[t]o bring defects in a statement of decision to the trial court's attention within the meaning of section 634, objections to a statement of decision must be 'specific.' [Citation.] The alleged omission or ambiguity must be identified with sufficient particularity to allow the trial court to correct the defect. [Citation.]" (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 498.) Counsel's statement did not inform the trial court with specificity of defendant's position that the portion of the proposed order providing, "There was no basis for petitioner to refuse to take a DUI test," was inadequate to decide the question of whether his refusal to submit to the test was the result of confusion as to his right to counsel.

court should have issued an alternative writ because the petition alleged grounds for relief. (*Id.* at p. 1018.) The court went on to note that the trial court had not made findings on the material issues in the petition, and stated, "[i]n an administrative mandamus review, if the trial court does not make such findings the judgment must be reversed." (*Ibid.*)[13] For this proposition, it relied on *Rabago v. Unemployment Ins. Appeals Bd.* (1978) 84 Cal.App.3d 200, 212 (*Rabago*). (*Ocheltree, supra*, 102 Cal.App.4th at p. 1018.) In *Rabago*, the trial court entered findings of fact and conclusions of law and a judgment denying the appellant's petition for writ of administrative mandamus. (*Rabago, supra*, 84 Cal.App.3d at p. 204.) The Court of Appeal found that the trial court had failed to find on one of the issues in the case, and that this failure was reversible error. (*Id.* at p. 212.) In doing so, it said, "As was stated in *San Jose etc. Title Ins. Co. v. Elliott* (1952) 108 Cal.App.2d 793, 801 ([*Elliott*]): ' "It has been repeatedly affirmed that where a court renders a judgment without making findings upon all material issues of fact, the decision is against law, and constitutes ground . . . for reversal upon appeal, provided it appears that there was evidence introduced as to such issue and the evidence was sufficient to sustain a finding in favor of the party complaining." [Citation.]' " (*Id.* at p. 212.)[14]

Thus, *Ocheltree*, upon which Robertson relies, is ultimately based on the rule discussed in *Elliott*. Elliott, however, predated a 1968 amendment to Code of Civil Procedure section 632. Until 1968, findings of fact and conclusions of law in superior court actions were required unless *waived*, either in writing or by oral consent in open court. After the 1968 amendment, they were not required unless *requested*. (See *Arceneaux, supra*, 51 Cal.3d at p. 1137; *R.E. Folcka Construction, Inc. v. Medallion Home Loan Co.* (1987) 191 Cal.App.3d 50, 53 (*Folcka Construction*).) A 1981

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[13] As we noted earlier, the *Ocheltree* court also said that a trial court in an administrative mandamus case *may* make its own findings. (*Ocheltree, supra*, 102 Cal.App.4th at p. 1017.)

[14] The *Rabago* court also cited *Guardianship of Brown* (1976) 16 Cal.3d 326, 333-334 (*Brown*).) (*Rabago, supra*, 84 Cal.App.3d at p. 212.) In *Brown*, the appellant had requested findings. (*Brown, supra*, 16 Cal.3d at p. 331.)

amendment eliminated the requirement of findings of fact and conclusions of law, instead requiring the court upon request to issue a statement of decision explaining the factual and legal basis for its decision on the controverted issues. (*Folcka Construction, supra*, 191 Cal.App.3d at p. 54.) Thus, the relevant statement in *Ocheltree* does not support the view that under *current* law, a trial court must make express findings of fact if no party requests a statement of decision.

In the circumstances, we reject Robertson's contention that the trial court failed to make adequate findings on the issue of his refusal to submit to a chemical test.[15]

C. Refusal to Take Chemical Test

Robertson contends that, as a matter of law, his refusal to take a chemical test did not constitute a refusal for purposes of section 13353, because he was confused about whether he had the right to consult with an attorney before taking a test.

As we have noted, the record shows that Ryan both showed the chemical test admonition to Robertson and read it to him, apparently more than once, and Robertson pointed to the portion of the form that said he did not have a right to an attorney, and argued that it meant he *did* have such a right. Robertson argues that his confusion about whether he had a right to an attorney was induced not by his inability to understand the plain language of the chemical test admonition, but by the fact that at some point during the events, Ryan gave him a *Miranda* warning informing him of his right to an attorney during questioning. (*Miranda v. Arizona* (1966) 384 U.S. 436.)

Several cases have held that where a driver's confusion about whether he is entitled to an attorney is induced by having received a *Miranda* warning, the officer should elaborate by telling the driver that the right to an attorney is not applicable to the

[15] Because we conclude the trial court was not required to issue a statement of decision, we need not decide whether the statement that "[t]here was no basis for petitioner to refuse to take a DUI test" would have been adequate had a statement of decision been required. Robertson also contends the trial court was required to make findings on the completeness of the administrative record. We have already rejected this argument on the ground that Robertson expressly disavowed it. In any case, we also reject it on the ground that Robertson did not request a statement of decision or make specific objections to the proposed judgment.

blood alcohol test. (*Rust v. Department of Motor Vehicles* (1968) 267 Cal.App.2d 545, 546-547; *Kingston v. Dept. of Motor Vehicles* (1969) 271 Cal.App.2d 549, 553-554; *Wethern v. Orr* (1969) 271 Cal.App.2d 813, 815.) However, "mere insistence on an attorney because the driver wants to consult one about which test to take does not establish officer-induced confusion. Neither does being too drunk to understand the proffered information or explanations. [Citation.] Further . . . lack of understanding engendered by partial intoxication does not affect the finality and effectiveness of refusal. . . . 'In determining whether an arrestee's refusal is the result of confusion, the crucial factor is not the state of the arrestee's mind; it is the fair meaning to be given his response to the demand that he submit to the chemical test.' " (*McDonnell v. Department of Motor Vehicles* (1975) 45 Cal.App.3d 653, 658-659.) "The question of officer-induced confusion is one of fact." (*Id.* at p. 658; see also *Cahall v. Department of Motor Vehicles* (1971) 16 Cal.App.3d 491, 497.)

The rule of *Rust*, *Kingston*, and *Wethern* does not assist Robertson. Ryan both showed the admonition to Robertson and explained to him, more than once, that he had no right to an attorney before taking the blood alcohol test. Referring to the portion of the admonition that said he had no right to an attorney, Robertson demanded an attorney. This evidence indicates that any confusion Robertson experienced was based on his misreading of the plain language of chemical test admonition, not that it was brought about by having received a *Miranda* warning.[16]

As noted in *Smith v. Department of Motor Vehicles* (1969) 1 Cal.App.3d 499, 505, an officer need not do more than advise on the requirement of a chemical test and the consequences of a refusal. "[I]t would be unreasonable for us to require the officer to do

[16] It is not clear from the record that Robertson was given the *Miranda* warning *before* refusing to take a chemical test. Ryan's police report says that he arrested Robertson and took him to the police station, that Robertson refused to submit to a chemical test, that Robertson performed field exercises again at the station, and that Ryan "Mirandized" Robertson, reading from his department-issued card. Even assuming Robertson received the *Miranda* warning before refusing to take a test, however, our conclusion would be the same.

more, unless there is an affirmative showing that the defendant was confused by the *Miranda* warning, especially under the circumstances, as here, involving a person who has been arrested for his actions which indicate that his confusion, if any, was induced by alcohol consumption." (*Ibid*.) In the absence of any affirmative indication that Ryan induced Robertson's confusion, we reject Robertson's contention.

D. Propriety of Traffic Stop

Robertson contends the arrest was invalid because Ryan lacked reasonable suspicion to stop him. Four findings are required at a license revocation hearing under section 13353: the officer had reasonable cause to believe the driver had been driving under the influence of intoxicating liquor or drugs; the driver was lawfully arrested; the driver was advised that if he refused to submit to a chemical test his driving privileges would be suspended; and the driver refused to submit to a chemical test. (*Music v. Department of Motor Vehicles* (1990) 221 Cal.App.3d 841, 846-847; § 13353, subd. (c).) Thus, "[a]n essential prerequisite for the application of the implied consent law is a lawful arrest for driving under the influence. [Citations.] Stated another way, a driver's license cannot be suspended under the implied consent law if the arrest is unlawful. [Citation.]" (*Music*, at p. 847.)

" 'A police officer may stop and question persons on public streets, including those in vehicles, when the circumstances indicate to a reasonable man in a like position that such a course of action is called for in the proper discharge of the officer's duties. [Citations.]' [Citation.] Under this standard, an officer may stop and briefly detain a suspect for questioning for a limited investigation even if the circumstances fall short of probable cause to arrest. [Citations.]" (*Brierton v. Department of Motor Vehicles* (2005) 130 Cal.App.4th 499, 509.)

As Robertson approached the intersection in question on Ramona, he faced a flashing red light at Lytton. Cross-traffic on Lytton had a flashing yellow light. When approaching a flashing red light, the driver must stop, and then may proceed subject to the rules applicable to stops at stop signs. (§ 21457, subd. (a).) When approaching a flashing yellow light, the driver "may proceed through the intersection or past the signal

only with caution." (*Id.*, subd. (b).) A driver approaching a stop sign, after stopping, "shall then yield the right-of-way to any vehicles which have approached from another highway, or which are approaching so closely as to constitute an immediate hazard, and shall continue to yield the right-of-way to those vehicles until he or she can proceed with reasonable safety." (§ 21802, subd. (a).) After so yielding, the driver "may proceed to enter the intersection, and the drivers of all other approaching vehicles shall yield the right-of-way to the vehicle entering or crossing the intersection." (*Id.*, subd. (b).)

Robertson contends that he committed no traffic violation because he yielded the right-of-way to the first car approaching along Lytton to his left before entering the intersection to turn left; according to Robertson, there was then no immediate hazard, as shown by the fact that the second car was able to avoid a collision by stopping with "plenty of clearance." Thus, Robertson argues, he had the right-of-way; accordingly, Ryan had no cause to detain him and the suspension of his license was invalid.

We reject this contention. Ryan testified that Robertson's truck entered the intersection directly in front of the second car going eastbound on Lytton, so that the car had to slow down and almost come to a stop to avoid colliding with Robertson's truck. Ryan could reasonably conclude that the second vehicle was "approaching so closely as to constitute an immediate hazard," and that Robertson failed to "continue to yield the right-of-way to those vehicles [constituting an immediate hazard] until he [could] proceed with reasonable safety." (§ 21802, subd. (a).) Substantial evidence supports the trial court's conclusion that the traffic stop was lawful.

III. DISPOSITION

The judgment is affirmed.

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RIVERA, J.

We concur:

_____
REARDON, Acting P.J.

_____
SEPULVEDA, J.